

**THE INTERNATIONAL COMMISSION
ON HOLOCAUST ERA INSURANCE CLAIMS**

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April 11, 2002

The Honorable Henry Waxman
2204 Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Waxman:

This letter is in response to your November 21, 2001 request for further information on ICHEIC. It should be read in the context of earlier information provided to the Committee.

Research and Publication of Names

From its inception, ICHEIC has been committed to the publication on its website of names of potential claimants. The Memorandum of Understanding that established ICHEIC requires that, in order "to assess the remaining unpaid insurance policies of Holocaust victims, a reasonable review will be made of the participating companies' files, in conjunction with information concerning Holocaust victims from Yad Vashem and the United States Holocaust Memorial Museum and other relevant sources of data." ICHEIC has pursued this goal on several fronts.

ICHEIC Website

First, the member companies have been asked to search their available archives and provide lists of unpaid policies of Holocaust victims from the period, in accordance with agreements reached with the Jewish representatives in ICHEIC. In addition, ICHEIC has conducted its own research in archives throughout Europe and the United States (including the National Archives and the United States Holocaust Memorial Museum), with the aim of collecting and publishing the names. This has resulted in the publication of over 9,200 names generated by the companies, over 50,000 names stemming from the Commission's independent research, and 7,000 names from other sources.

More names are being added as the ICHEIC research program is completed. ICHEIC is also in negotiation with the German Foundation over the provision by German companies that do not belong to ICHEIC of additional names of insurance policyholders who became Holocaust victims.

Names supplied by the companies are analyzed by Yad Vashem to identify policyholders who are likely to have been Holocaust victims and hence potential ICHEIC claimants. Although a name provided by a company may not be matched with Yad Vashem, and therefore may not end up on a list published by ICHEIC, that name would still come up on a company search if a claimant files with ICHEIC. We have strongly encouraged all potential claimants to file if they believe they or a relative may have an unpaid Holocaust-era policy, regardless of whether the name is on the website. The lists should be seen as an additional tool to identify and attract potential claimants.

All members of the European Union are subject to a European directive on the protection of personal data. The general principle behind this legislation is that publication or transfer to a third party of personal data may only be permitted with the consent of the person to whom the data relates. Although there are certain exceptions which allow publication where it is believed to be in the interests of the person concerned, the permission of the relevant data protection authority must still be obtained. This is one of the matters under discussion with the German Foundation.

In addition, in France and Belgium, there are specific legal prohibitions on the publication of names selected by reference to ethnic origin or religion, on the grounds that such publication may encourage racial or religious persecution. An exception to this prohibition in France was requested by AXA but rejected by the data protection authority.

Using ICHEIC Research To Help Claimants

All claims received by ICHEIC are matched against the research database of Holocaust-era policies (all of which are or will be on the ICHEIC website). The first step in matching is to check for exact spellings of family name and first name plus exact date of birth. Some 500 such matches are being sent to the MOU companies. ICHEIC is also using techniques which match the names phonetically and by variants in the dates of birth. Experience has shown that some of these matches are close enough to be regarded as exact. They too will be sent to the companies. Further work will be undertaken to investigate the lower probability matches. This matching work will continue throughout the claims process.

ICHEIC's research database has been developed, primarily under the leadership of a distinguished Israeli archivist, from investigating public archives in Germany and Eastern Europe for information about insurance policies belonging to Holocaust victims. A significant addition was made possible by the registration of nearly 9,000 names (and 15,000 policies) from the Vienna archives. The main sources were asset declarations required of Jewish families by the Nazi authorities. Once identified, details have been copied or scanned (where this was possible) and the details entered in the ICHEIC research database. The names of the policyholders are also being published on the ICHEIC website. To date, therefore, the research database has records of nearly 70,000 names and 90,000 policies available to be searched.

As stated earlier, research was also conducted at the United States Holocaust Memorial Museum archives, as well as the National Archives and Record Administration. This research resulted in the addition of 3,247 policyholder names (5,804 policies) to the website. There is no need for Yad Vashem to process these names, since the policyholders are known to have been Holocaust victims.

ICHEIC has received a small number of claims which name the U.S.A. or the U.K. as the country where the policy was issued. Some claims are lodged against these companies, although none are members of ICHEIC. In such cases, ICHEIC requests the company to investigate and pay the claim. Several companies have agreed to do so and have made offers to claimants.

Several Swiss companies which do not belong to ICHEIC are covered by the U.S. court decision on Swiss banks and by the Swiss-based Claims Resolution Tribunal. ICHEIC has agreed to send claims on these companies to the Claims Resolution Tribunal. We currently have databases from three non-MoU companies totaling 4,300 names and an additional 750 names provided by the Dutch Sjoa Foundation.

The research database makes no distinction between Holocaust survivors and those who died. The records are based either on asset declarations by Jewish policyholders from 1938 on, or on information supplied by companies, and therefore would not indicate whether the person had survived or perished.

Research by MoU Companies

Each company has either a manual or electronic database of varying levels of completeness. Each claim sent to a company is to be cross-checked against its database. If a match is found, the claimant is informed in the decision letter from the company.

Claims that do not name a company have been sent for investigation to all MoU companies which sold insurance in the country where the claimant believes the policy was issued. They are also searched against the ICHEIC's research database. If agreement is reached with the German Foundation, many of these claims will also be sent to non-MoU German companies if the claims relate to Germany, or to Eastern European countries in which some non-MoU German companies operated. This may improve the chance that a match can be found with a particular company's record.

Humanitarian Payments

ICHEIC envisions that, once all unnamed company claims have been investigated against all the relevant companies' records, those claims for which no match has been found will be reviewed and an assessment made of the supporting evidence provided by claimants.

Under §8A1 of the MoU, a claim that names no company, but is supported by documentation or other credible information substantiating the existence of insurance, would qualify for a humanitarian payment.

A second provision of §8A1 is to compensate claimants with evidence of policies issued by companies no longer in existence. In the great majority of cases, portfolios of defunct companies have been absorbed by solvent companies. However, ICHEIC has not yet agreed on how to deal with the approximately 1,000 claims that name former Eastern European companies for which no modern-day successor company has accepted responsibility. This situation is the result of confiscation by the Nazis and post-war liquidation of portfolios by Communist regimes.

The system of reviewing §8A1 claims for a humanitarian payment can only be put into operation once the claims filing period has ended; the filing deadline has been extended until September 30, 2002. In addition, the main source of funds for §8A1 claims is the 350 million DM offered by the German Foundation; therefore, no decisions can be taken on unnamed company claims until negotiations with the German Foundation have been concluded.

Review of Claims

If a claimant has a question or seeks information on the status of a claim, he or she can contact ICHEIC either by letter or by telephone. ICHEIC has contracted with a call center (based in New York), which operates free of charge on a 24-hour, 6-day-a-week basis. Operators fluent in all of the relevant languages are available. The call center has real-time access to the status of any claim and can give the claimant general information as to where it is in the system. If the claimant has a particular problem that cannot be answered by the status file, the call center communicates with the claims processor by e-mail and the query can be answered quickly. Queries by mail are directed to the claims processor for response.

The most common reason given for rejecting a claim is that the company could not find a match in its records and that the claimant has not provided sufficient evidence or information to establish that an insurance contract existed. Other reasons include: the policy had already been paid after the war or compensated by the German government; or the policy had been cancelled or surrendered before the Holocaust era. In rejecting a claim which specifically named a company, that company must provide the claimant with its reason for denial, as well as copies of all relevant documents upon which its decision was based.

ICHEIC has made it clear to the companies that, when appropriate, past decisions on claims may need to be revisited in light of any new or amended ICHEIC guidelines. In practice, companies have often deferred making decisions on claims likely to be affected

by a pending ICHEIC policy decision. All companies are required to review past denial decisions when their audit has been completed, taking into account the findings of the audit and any intervening ICHEIC decisions. The work of the monitoring group (see below) will provide a further check on this.

Appeals Process

The ICHEIC Appeals Tribunal Rules of Procedure (the Rules) were agreed and adopted by the Commission in November 2000. An ICHEIC Appeals Tribunal has been set up and has been ready to take ICHEIC appeals since May 2001.

As a matter of procedure, a claimant can only appeal a claim where the member company has issued a final decision letter. Member companies can issue final decision letters only after their audits have been satisfactorily completed. Audits have been completed on AXA (France), AXA (Germany), and Zurich, and these companies do not have a substantial number of named company claims submitted to them.

The first appeals are only now being processed. ICHEIC expects each appeal to be decided within a maximum of three months. Because the number of appeals processed to date is not significant, it is uncertain how many arbitrators will be needed. No arbitrator will be paid any fees unless and until an arbitrator is selected and appointed under the Rules to determine an appeal. The arbitrators selected for our panel have agreed to rates of compensation below those which would normally be charged.

The Appeals Office has received 37 Appeals Submission Agreements (the ASA) from claimants. To date, seven awards (decisions) have been made. Of these, four have found for the member company and three have found for the claimant, reversing the original company decision. One claim has been settled after submission but before the appointment of an arbitrator.

In three of the four cases upholding the companies, the company did not find any record of a policy and the claimant did not submit evidence sufficient to prove the existence of a contract. In the other appeal, the claimant's father had been compensated for the policy under the BEG.

In two of the appeals decided in favor of the claimants, the company did not find a match within its records. Appeals Vice-President Sir Anthony Evans found, however, that the claimants' anecdotal evidence was of sufficient particularity and authenticity to reach a finding that the policies had, in fact, been issued.

In the other award in favor of the claimant, Appeals President Judge Abraham Gafni concluded, on the basis of the facts presented to him, that there had not been "full and final settlement" on the policy at issue and, therefore, the claimant's appeal was sustained.

Policing/Monitoring

As indicated in my testimony, I have established a Monitoring Group which will report directly to me. The group will consist of a representative of the U.S. insurance regulators, a representative of the Jewish organizations, and appropriate members of my staff.¹ Lord Peter Archer, Q.C., a distinguished British lawyer and politician, is the designee of the Jewish groups.

The purpose of the group is to determine how carefully the ICHEIC standards and my decision memoranda are being followed as claims are processed; whether those standards are uniformly applied company by company; what steps within the ICHEIC process need attention; and possible improvements in the process or in the written standards to clarify any ambiguities or other areas of concern.

Because the claims processor and files are in the United Kingdom, the initial reviews have taken place there. I expect the group to make appropriate recommendations to me on the basis of their findings and analyses.

While this exercise must obviously entail an examination of individual claims, it must not become an independent "review" process. I expect it will be a method through which ICHEIC can address issues that arise with some frequency. It will afford ICHEIC and the companies an opportunity to rectify mistakes made which may be the result of a lack of understanding or compliance with the standards of proof or the decision memoranda that have affected a significant number of claims.

ICHEIC Administration and Costs

The members of ICHEIC agreed from the outset that, in order to foster open and worthwhile discussions and encourage compromise, all discussions and meetings would be confidential, and that our meetings would not be open to the public. On occasion, I have issued public statements following a meeting. The members also are able to communicate with their constituents the results of the meetings. Decisions taken by ICHEIC which are of importance to claimants are generally made available either through press releases or by publication on the ICHEIC website.

I will be writing separately to the Committee on the matter of publication of companies' audits once they are in hand.

ICHEIC's accounts for the period from 1998 to end 2000 are currently being audited - the results should be available relatively soon.

¹ I have invited the insurance companies to name a representative to the Monitoring Group. They have decided not to participate.

The staff of the Washington office consists of myself, the Chief of Staff (the former Director of the U.S. Justice Department's Office of Special Investigations and Executive Director of AIPAC), and four other full-time and one part-time staff. The Washington personnel work closely with me and my Chief of Staff in helping to formulate policy, coordinate with the component members of ICHEIC, support me in my negotiations with the German Foundation, and to "troubleshoot" problems which arise. The website is maintained by the D.C. office, as is coordination with Yad Vashem.

The London office is headed by the Vice-Chairman, Geoffrey Fitchew, and has 10 other full-time and one part-time staff. There is a program manager for each of claims (including research), with four support staff; appeals; and audit; plus an Administration Manager. The Audit Manager reports to the Vice-Chairman. Claims, appeals, and administration report to the Chief of Staff in London. The Vice-Chairman has a Confidential Assistant and other staff members are served by an Office Secretary.

The London office is responsible for management of the claims, audit, and appeals processes, including contract management. Staff in the London office work closely with colleagues in Washington in supporting ICHEIC's policy developments. The Vice-Chairman, who is in frequent contact with me, participates in all key meetings – in particular with the German and other European Foundations and in the audit process. He often serves in my place at meetings.

As indicated in my prior response, the London office is in the hands of my close associate Geoffrey Fitchew. We in the Washington office communicate by telephone on a daily basis to discuss all issues or other areas of concern. In addition, we have meetings either here or in London when the situation requires.

Salaries

Salaries paid to the personnel of the Washington office total approximately \$990,000 per year. This amount includes my salary of \$360,000 per annum. I should note, however that my ICHEIC responsibilities have been sufficiently demanding that I have given up membership on several boards and foregone speaking engagements, etc., with a total cost to me of over \$600,000 per year. London office salaries total approximately \$900,000 per year.

Humanitarian Funds

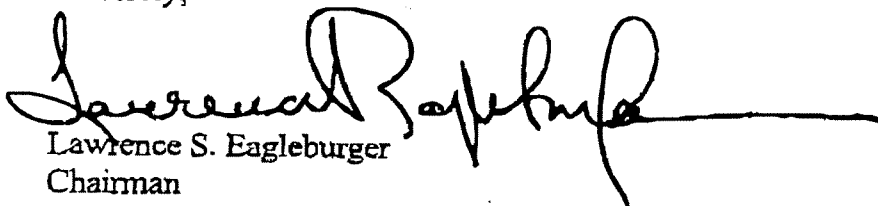
Section 8B of the MoU provides for the general humanitarian fund to be used for the benefit of needy victims of the Holocaust and for other Holocaust-related humanitarian purposes. To that end, several options are being investigated to determine the best methods of allocating and distributing the funds in a manner that would provide the most benefit to

the needy victims of the Holocaust and the Jewish community as a whole. These issues have yet to be decided, since most efforts to date have focused on the claims process and resolving individual claims.

No ICHEIC member has veto power on any decisions made by ICHEIC. The decisions taken in ICHEIC are supposed to be made by a consensus of the members. However, when consensus cannot be reached (a common event in the life of ICHEIC), I have issued decisions after extensive debate and negotiation. These decisions have often received less than enthusiastic endorsement from one party or another. But they seem to have been broadly accepted. I must emphasize that there is no reference in the MoU giving the Chairman this decision-making authority. I decided to exercise this "authority" only after it became obvious to me that "consensus" without any decision-making authority doomed the ICHEIC to irrelevance and ultimate failure.

On a final note, I would like to update you on the current status of the claims process. To date, offers exceeding \$20 million have been made to claimants as a result of ICHEIC's efforts. While still not at the levels we all hope will be achieved, each day brings more offers to deserving claimants. These offers are the direct result of the huge amounts of time, effort, and – yes – money that has been spent to develop a claims process, inform as many potential claimants as possible about that process, develop a claimant-friendly system, ensure compliance with audits, work with other countries and Holocaust commissions, and resolve the myriad issues involved in getting claimants paid. To my mind, this is great progress, particularly when cast against what the claimants could have gotten before ICHEIC.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Lawrence S. Eagleburger', with a long horizontal line extending to the right.

Lawrence S. Eagleburger
Chairman

I C H E I C

BACKGROUND INFORMATION

The International Commission on Holocaust Era Insurance Claims (ICHEIC) was established pursuant to a Memorandum of Understanding (MOU) dated August 25, 1998. The MOU was the product of negotiations among six European insurance companies*, insurance regulators of the several states, and representatives of a number of Jewish groups.

The goal of ICHEIC is to resolve unpaid insurance claims arising out of the Holocaust era by attracting as many potential claimants as possible, and to honor legitimate claims. To accomplish this, ICHEIC has sought: (1) a full accounting by the insurance companies of their claims practices during the Holocaust era; (2) publication of the names of Holocaust victims who held unpaid insurance policies and are potential claimants (these names would be a product of the ICHEIC process); and (3) the establishment of a claims and valuation process, with relaxed standards of proof, to identify, settle, and pay individual claims at no cost to the claimants.

As of March 22nd, 2002, there have been 1,167 offers to claimants; 466 of these offers have been accepted. (The total value of the offers include \$11.672 million on claims sent directly to ICHEIC and \$7.4 million on claims sent directly to companies using ICHEIC standards.) Companies who are not members of the Commission have made 60 of these offers totaling \$852,269 and have paid \$293,150. Other Holocaust organizations with which ICHEIC has cooperation agreements – the Dutch Sjoa Foundation and the Generali Fund in Israel – have made additional offers, which brings the total to over \$20 million in offers.

It is important to bear in mind that ICHEIC is the first and only system in place to systematically address the issue of unpaid insurance claims. Simply put, \$20 million paid to claimants is a direct result of ICHEIC.

* One of the original company signatories – Basler – later resigned from ICHEIC.

Prior to ICHEIC, there were very few avenues by which victims of the Holocaust, their heirs, or beneficiaries could pursue a claim against an insurance company other than through costly, protracted and difficult litigation. ICHEIC offers an alternative to those thousands of potential claimants throughout the world. ICHEIC is doing this at absolutely no cost to any claimant.

ICHEIC's task is enormous: many records from the time period are no longer available; most claimants have few relevant documents; and companies do not have complete records from that period.

ICHEIC has had to confront the contentious and often emotional issues of structuring a fair claims process, establishing valuation, audit and appeals processes, and ensuring the publication of lists.

Despite these obstacles, ICHEIC has achieved a high level of success, in addition to the payment of \$20 million to claimants:

- Outreach: In February 2000, ICHEIC launched a worldwide claims process through global advertising to attract potential claimants in the United States, Israel, Canada, FSU, Eastern Europe (13 countries), Western Europe (18 countries), and Latin America (20 countries). Advertisements appeared over 1,000 times in secular publications and 650 times in Jewish publications. A training manual and kit were prepared for Jewish organizations to offer assistance to claimants. The cost of this outreach effort was \$9.3 million.
- Web Site: A web site was established early in the life of ICHEIC to inform claimants how to process claims and make claim forms available. In addition, the site contains names of potential claimants gleaned from lists provided by the companies and ICHEIC's independent research (described below). As of March 2002, 59,244 names have been published on the ICHEIC web site, representing 87,447 policies. The lists have been searched approximately 183,000 times.

As more names are supplied by the companies and our own research continues, we can expect the list of names on our web site to increase.

ICHEIC's web site (www.ichcic.org), which is available in 23 languages, has received 176,634 hits. Approximately 21,390 claim forms have been downloaded from the site.

- Archival research: Archives were researched in Poland, the Czech Republic, Germany and Slovakia. Additional research was conducted at the National Archives and the Holocaust Museum in the United States. This research continues and will undoubtedly result in the discovery of additional names which will go on our web site. Thus far, the research project has cost approximately \$1.5 million.
- Call Center: ICHEIC contracted with D. F. King, a Call Center in New York, to answer claimant calls and distribute claim packs. The Call Center provides 24-hour, worldwide toll-free telephone service, answered by operators fluent in over 15 languages. After a claim has been filed, the Call Center is available to provide status information. The focus is to ensure that as many potential claimants as possible are aware of the program and informed as to the procedures. To date, the Call Center has distributed 104,311 claim packs and answered 224,847 claimant calls.
- Eastgate: ICHEIC contracted with Eastgate, a claims handling agent based in Gloucester, England, which processes, translates and distributes claims submitted to ICHEIC. Very few of the claims are supported with hard documents; many rely on anecdotal evidence; and some provide almost no information at all. Each claim is treated in a manner guaranteed to provide the widest distribution for investigation to determine whether or not a valid claim exists. Eastgate employs 160 people for this purpose.

As of March 22nd, 2002, Eastgate has received 84,767 claims. Of these, 27,000 do not relate to insurance and have been directed to other Holocaust restitution organizations. Moreover, nearly 80% of the claims relating to insurance do not name a company and might more accurately be described as inquiries. The cost to administer and process these claims to date has been \$17.6 million.

- Monitoring Group: A Monitoring Group is in place, whereby we can monitor the efficacy of the claims handling procedures, as well as the manner in which ICHEIC's rules, guidelines and decisions are being honored by the companies in evaluating claims.

- Appeals Panel: All claimants are entitled to appeal the decision made by the companies. ICHEIC has established a detailed and fair appeals procedure headed by a President (from the U.S.) and a Vice-President (from the U.K.), both of whom are distinguished jurists. Current projections indicate there may be in the region of 3,000 appeals. The anticipated cost for administering appeals is expected to be \$5 million. We have selected 30 highly qualified arbitrators (from all over the world), who will review and decide upon appeals.

The Appeals Office has received 37 Appeals Submission Agreements from claimants; seven awards have been made to date. Of these awards, four have found for the Member Company, three have found for the Claimant and reversed the original company decisions.

- Dutch Insurance Association: In November 2000, the Dutch Insurance Association (SJOA) signed the ICHEIC Memorandum of Association on behalf of insurance companies in the Netherlands. The SJOA has adopted ICHEIC standards in evaluating claims against Dutch companies, and as of March 1, 2002, 147 policies, in the amount of \$448,405.00, were paid to 363 entitled parties. In addition, the SJOA has provided 750 names of potential claimants, which have been published on ICHEIC's web site.
- \$100 Million Generali Settlement: In November 2000, ICHEIC and the Jewish organizations signed an agreement with the Italian insurer Generali, pursuant to which Generali has provided \$100 million to settle claims against it and for humanitarian purposes. Claims against Generali are being processed and evaluated by the Generali Fund, located in Jerusalem. That Fund is chaired by the former President of the Supreme Court of Israel. The Fund, which coordinates closely with ICHEIC, follows ICHEIC relaxed standards of proof and valuation guidelines. To date, the Fund reports that it has made offers in the amount of \$14,100,830 and made payments to claimants amounting to \$11,450,000.
- German Foundation Initiative (GFI): The recent settlement with German industry of approximately \$5 billion (commonly referred to as the slave labor settlement) has a significant insurance component. Pursuant to an Executive Agreement signed by the U.S. and German governments, \$200 million Deutschmarks are earmarked to satisfy claims against all German

insurance companies, and \$350 million Deutschmarks have been set aside for ICHEIC's Humanitarian Fund.

Negotiations between ICHEIC and the GFI are ongoing to reach agreement on procedures to be used in processing and evaluating claims filed against German companies. At present, two significant issues remain unresolved: (1) the process whereby German companies will produce lists of policyholders to be published on the ICHEIC web site, and (2) whether, and the extent to which, MOU companies will be reimbursed, from funds earmarked for ICHEIC, for monies previously given for ICHEIC expenses.

- Extension of Claims Filing Deadline: The deadline for filing claims has been extended to September 30, 2002, in order to allow adequate time to collect lists from the companies, process them through Yad Vashem, and publish the names of potential claimants on our website, with adequate time for the public to review the lists. In addition, we expect to receive more names from our continuing research in European archives, as well as from non-MOU German companies, when an agreement is reached with the German Foundation. This extension will apply to all claims and will not be limited to claims specifically linked to new names published on our web site.